

Atty Dkt No.: 2000P07532US02
Serial No.: 09/742,696

REMARKS

Claims 1 – 16 remain in the application and stand finally rejected. An amendment to claims 1, 3, 5 – 7, and 9 – 16 is offered herein. No new matter has been added. Although this Amendment is being timely filed, the Commissioner is hereby authorized to charge any fees that may be required for this paper or credit any overpayment to Deposit Account No. 19-2179.

Claims 1, 6, 7 and 12 – 16 are finally rejected as being unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,564,261 to Gudjonsson et al. in view of U.S. Patent No. 6,560,329 to Dragnich et al., and Coulouris et al., *Distributed Systems Concepts and Design*, Second Edition, 1994, pp. 34 – 38, and U.S. Patent No. 6,574,605 to Sanders et al. Claims 2 – 5 and 8 – 11 are finally rejected under 35 U.S.C. §103(a) over Gudjonsson et al., Dragnich et al., Coulouris et al. and Sanders et al. in further combination with U.S. Patent No. 6,335,927 to Elliott. The final rejection is respectfully traversed.

In both the prior Office action, dated May 26, 2005 at pages 1 and 2, and in the final Office action at pages 8 and 9, it is asserted that

a telecommunications system including a telephony Internet server, a dispatcher is provided for delivering messages between dispatcher clients, i.e., software subsystems be in the same process, a different process, or on a different machine, that need updates, etc. The dispatcher manages a pool of threads to balance the workload. The dispatcher can process both synchronous and asynchronous messages by dispatching the message to all registered subsystems in order of their registered priority. Subsystems register for receiving predetermined messages. The dispatcher maintains a database of their destinations. The dispatcher itself needs to have no knowledge of the contents of messages that are to be sent; and, the sender software subsystems need have no knowledge of the corresponding destinations, dispatching the messages can be anywhere on the network, the server dispatching the messages (emphasis the Examiner's)

is not recited in the rejected claims. Applicants note that while the claims did not specifically use the same exact words for all of the underlined terms, much of it was included in the claims as filed. The "message receivers," in original independent claims 1, 7 and 16, for example, are clearly "dispatcher clients," i.e., those dispatcher clients receiving messages. Be that as it may,

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however, claims 1, 3, 5-7, 9-10 and 16 are amended herein to specifically include the above verbiage. No new matter has been added.

Regarding the final rejection of claims 1, 6, 7 and 12 – 16 under 35 U.S.C. §103(a) over Gudjonsson et al. in combination with Dragnich et al., Coulouris et al., and Sanders et al., it is asserted on page 5 of the final Office action that “the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” However, section 2143 of the MPEP provides that a *prima facie* case of obviousness requires “some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings” (emphasis added). Thus, before combining references, there must be some suggestion to combine the references or some suggestion to modify the references to result in the combination. Moreover, the MPEP §2143.01 provides in pertinent part

III. < FACT THAT REFERENCES CAN BE COMBINED OR MODIFIED IS NOT SUFFICIENT TO ESTABLISH PRIMA FACIE OBVIOUSNESS

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) ... (emphasis added).

While the final Office action asserts that once each of the references is selected, a person of ordinary skill in the art would be inclined to modify the combination to result in the present invention as recited in the finally rejected claims, no showing of any suggestion to combine the references has been provided. Furthermore, as has previously been noted, 35 U.S.C. §103(a) requires that “the subject matter as a whole would have been obvious at the time the invention was made (emphasis added),” i.e., that both combining Gudjonsson et al. Dragnich et al., Coulouris et al., and Sanders et al., and modifying the combination is suggested.

Although the final Office action offers specific alleged suggestions to combine individual features of individual references, there is no explanation why a person of ordinary skill in the art, absent the teaching of the present application in hindsight, would be inclined to select those four references together from all of the references available “at the time the invention was made”; just select those specific features from the four selected references; and, combine the selected features to result in the claimed “subject matter as a whole” as recited in claims 1, 6, 7 and 12 –

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16. Why, for example, absent the teaching of the present application, were Gudjonsson et al. and Dragnich et al. selected as the starting point for the alleged obvious combination, rather than Coulouris et al., and Sanders et al., or Gudjonsson et al. and Sanders et al? Thus, since no source for the suggestion to select Gudjonsson et al., Dragnich et al., Coulouris et al., and Sanders et al., and to combine just selected features from each, it is apparent that the present application is being used in hindsight as a template to just those select features from those selected references, and then assemble the selected features to result in the present invention. Therefore, combining Gudjonsson et al., Dragnich et al., Coulouris et al. and Sanders et al. is not suggested "as a whole" as 35 U.S.C. §103(a) requires and so, claims 1, 6, 7 and 12 – 16 are not obvious "as a whole" under 35 U.S.C. §103(a). Reconsideration and withdrawal of the final rejection of claims 1, 6, 7 and 12 – 16, as amended, is respectfully solicited.

Regarding the final rejection of claims 2 – 5 and 8 – 11 under 35 U.S.C. §103(a) over Gudjonsson et al., Dragnich et al., Coulouris et al. and Sanders et al. and further in view of Elliott et al.; Elliott et al. fails to add anything to the teachings of Gudjonsson et al., Dragnich et al., Coulouris et al. and Sanders et al. to suggest selecting those references and combine those selected references to result in the present invention "as a whole" as recited in claims 1 or 7 from which claims 2 – 5 and 8 – 11 depend. Accordingly, the combination of Gudjonsson et al., Dragnich et al., Coulouris et al., Sanders et al. and Elliott et al. is not suggested and does not make claims 2 – 5 and 8 – 11 obvious "as a whole" under 35 U.S.C. §103(a). Reconsideration and withdrawal of the final rejection of claims 2 – 5 and 8 – 11 is respectfully solicited.

The applicants thank the Examiner for efforts, both past and present, in examining the application. Believing the application to be in condition for allowance, both for the proposed amendment to the claims and for the reasons set forth above, the applicants respectfully request that the Examiner reconsider and withdraw the final rejection of claims 1 – 16 under 35 U.S.C. §103(a) and allow the application to issue.

Should the Examiner believe anything further may be required, the Examiner is requested to contact the undersigned attorney at the telephone number listed below for a telephonic or personal interview to discuss any other changes.

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Respectfully submitted,

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